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APPEALS - APPELLATE REVIEW BY THE COURT OF APPEALS

Facts: Carroll County filed suit against building owners, the Singhs, and store owner/operator, Love Craft, in the District Court of Maryland for Carroll County for temporary and permanent injunctive relief to restrain the continued operation of an alleged adult store in violation of a county zoning ordinance. The defendants filed a counter-claim, requesting a declaratory judgment that the zoning ordinance was unconstitutional. Following an evidentiary hearing, the District Court held that the property was being unlawfully used as an adult store and issued a permanent injunction. At a later hearing, the District Court denied the defendants' motion to alter or amend the judgment and, in a subsequent opinion and order, denied the county's contempt petition against the Singhs and refrained from entering a finding of contempt against Love Craft, giving Love Craft additional time to bring itself into compliance. Love Craft appealed to the Circuit Court for Carroll County, seeking *de novo* review of the District Court judgment, and filed a separate complaint for declaratory and injunctive relief. The county sought summary judgment on the complaint. The appeal and complaint were docketed as separate actions. At a hearing held on August 4, 2003, the Circuit Court consolidated the actions, dismissed the Singhs from the case, and reserved ruling on the county's motion for summary judgment. Four days later, the court filed a memorandum opinion in which it concluded that the county zoning ordinance was unconstitutional and struck any previous rulings or injunctions, noting that the matter upon which it was acting was the appeal from the District Court judgment. The county noted an appeal to the Court of Special Appeals (No. 1376, Sept. Term 2003).

Love Craft filed a motion to strike the county's notice of appeal in Circuit Court and a motion to dismiss in the Court of Special Appeals. The Circuit Court granted Love Craft's motion to strike, and no appeal was taken. Several months later, the Court of Special Appeals denied Love Craft's motion to dismiss the same appeal, and subsequently refused to strike its order, leaving the already-dismissed appeal facially alive. On December 18, 2003, the Circuit Court granted Love Craft's motion to strike the county's answer to Love Craft's earlier complaint for declaratory and injunctive relief and to dismiss the action as moot, which the county appealed to the Court of Special Appeals (No. 2561, Sept. Term 2003). On May 11, 2004, the Circuit Court granted Love Craft's petition for attorneys' fees in the District Court appeal, which the county appealed to the Court of Special Appeals (No. 643, Sept. Term 2004). On May 14, 2004, unaware of Appeals Nos. 2561 and 643 or the Circuit Court order dismissing No. 1376, the Court

of Appeals, on its own initiative, issued a writ of *certiorari* to the Court of Special Appeals in No. 1376. The Court of Special Appeals later transferred Appeals Nos. 2561 and 643 to the Court of Appeals, which are currently pending.

Held: Dismissed, with costs, as having been improvidently granted. The Court of Appeals did not have the authority under § 12-305 and 307 of the Cts. & Jud. Proc. Article to review the Circuit Court judgment pursuant to a writ of *certiorari* issued to the Court of Special Appeals since the county did not have the right to appeal a judgment rendered by the Circuit Court in exercise of its appellate jurisdiction to the Court of Special Appeals under §§ 12-301 and -302 of the Cts. & Jud. Proc. Article. Furthermore, the Court of Special Appeals failed to preserve appellate review by transferring the appeal pursuant to Md. Rule 8-132. Finally, although the Circuit Court's order striking the county's notice of appeal was erroneous and not authorized under Md. Rule 8-203, it was reversible on appeal, not void for lack of jurisdiction. When no appeal was filed within thirty days, the Circuit Court's order became final, the appeal was dismissed, and there was nothing before the Court of Special Appeals to review when the Court of Appeals issued the writ of *certiorari*.

County Commissioners of Carroll County, Maryland v. Carroll Craft Retail, Inc. T/A Love Craft, No. 21, Sept. Term 2004, filed Dec. 3, 2004. Opinion by Wilner, J.

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ATTORNEYS – DISCIPLINARY ACTION – RULES OF PROFESSIONAL CONDUCT – DISHONEST CONDUCT.

Facts: Attorney Jared K. Ellison, on behalf of the law firm employing him, represented a Mr. Moody in a personal injury claim. After securing medical records and billings from Moody's physical therapist in exchange for an Assignment guaranteeing that Ellison would pay the therapist from the proceeds of the settlement, Moody terminated Ellison's and the firm's representation by letter. Ellison notified the therapist by letter of the termination and declared the Assignment void.

Ellison, however, operating outside of his firm, continued to represent Moody in his claim. Despite not having a written contingency fee agreement with Moody, he negotiated and received a $5,000.00 settlement. Ellison received personally a $1,715.00 fee and distributed the rest of the funds to Moody but did not give Moody a written statement of the settlement. When Moody's physical therapist later learned that settlement had been reached, he contacted Ellison. Ellison told the therapist that there had been no settlement of Moody's claim, Ellison did not owe him any money, and that the therapist should bill Medicare for the balance due on Moody's account. The therapist filed a complaint with Bar Counsel on 10 February 2003, claiming that Ellison, while acting on the behalf of Moody, violated the terms of the Assignment by not paying the balance due on Moody's account from the proceeds of the settlement.

Bar Counsel and its investigator made several attempts through letters, phone calls, and a personal interview to resolve the complaint. From Bar Counsel's initial letter dated 21 February 2003 until a personal interview with its investigator on 15 April 2003, Ellison did not disclose that he had represented Moody throughout the pendency of Moody's claim. Ellison admitted in that interview that he had received the settlement of $5,000 and paid Moody, but had not taken a fee. After requests for bank documents, Ellison finally admitted in a letter dated 13 May 2003 that he had received a fee for his representation of Moody.

Held: Disbarred. The attorney violated MRPC 1.15 (c), 1.15 (a), 8.1 (b), 8.4 (c) and (d) and Maryland Rules 16-606 and 16-609. In this case, the attorney's oral agreement to a contingency fee arrangement violated MRPC 1.15(c), which requires that contingency fee arrangements be in writing. Furthermore, Ellison violated MRPC 1.15 (c) because he did not provide Moody with a written statement of the outcome of the settlement and the funds disbursed.

The attorney violated Maryland Rule 16-609 because he distributed funds to Moody and himself before satisfying the terms of the valid assignment with the physical therapist / assignee. Because the Assignment required him to pay the therapist from settlement funds, any disbursement to himself or his client without satisfying the claim of the assignee was unauthorized.

The attorney also violated Rule 16-606 because he did not properly title his attorney trust fund account in one of the three required by the Rule. Ellison's violations of Rule 16-606 supported a violation of MRPC 1.15 (a) that requires lawyers to maintain third-party funds, in this case the therapist's claim, in accordance with Title 16, Chapter 600 of the Maryland Rules.

The attorney's intentional dishonest conduct towards the third party assignee / physical therapist in the representation of a

client, and Bar Counsel and its investigator in the course of investigating the assignee's complaint, violated MRPC 8.1 (b), 8.4 (c) and (d). These violations alone merited disbarment despite mitigating factors of an absence of a prior disciplinary record and relative inexperience in the practice of law.

Attorney Grievance Commission v. Jared K. Ellison, Miscellaneous Docket AG No. 46, September Term, 2003, filed February 4, 2004. Opinion by Harrell, J.

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CIVIL PROCEDURE – DEPOSITIONS AND DISCOVERY – REQUESTS FOR ADMISSIONS – WITHDRAWAL OR AMENDMENT OF RESPONSE – TRIAL COURT DID NOT COMMIT AN ABUSE OF ITS DISCRETION WHEN IT DENIED A MOTION TO WITHDRAW OR AMEND ADMISSIONS MADE BY A DEFENDANT CORPORATION IN ASBESTOS LITIGATION.

Facts: Mesothelioma, a rare form of cancer almost always attributed to asbestos exposure, caused the death of Paul J. Wilson and on March 2, 2000, his surviving family members ("petitioners") brought suit in the Circuit Court for Baltimore City against several corporations for personal injuries and wrongful death. The suit alleged that the corporations had been involved in the manufacturing, distribution and/or installation of asbestos-containing products to which Wilson was alleged to have been regularly exposed due to his employment. Garlock, Inc. ("Garlock") and John Crane, Inc. ("Crane") were two of the named defendant corporations.

On April 5, 2002, while in the discovery phase of the proceedings, petitioners electronically filed through the CourtLink system a "First Request for Admission of Facts and Genuineness of Documents," which was sent to each defendant corporation involved in the suit and their respective attorneys. The request for admissions asked that the defendant corporations admit, *inter alia*, that Garlock manufactured asbestos-containing gaskets that were used at Wilson's places of employment and that Wilson inhaled the released fibers from these gaskets during his employment.

Admitting that it was no party's fault but its own, Garlock

failed to respond timely to the request for admissions. Thus, under Maryland Rule 2-424 (b), the admissions were deemed admitted for the purposes of the upcoming trial. Aggrieved by the situation, Garlock filed a motion to withdraw or amend its deemed admissions on June 17, 2002. The pre-trial hearing, which concerned, *inter alia*, Garlock's motion to withdraw or amend was held on June 21, 2002, four days before the scheduled start of trial on June 25, 2002. Because the trial court found that prejudice would likely result if Garlock were allowed to withdraw or amend its admissions, it denied Garlock's motion. Certain admissions pertaining to Garlock's manufacture of asbestos-containing gaskets and Wilson's inhalation of asbestos fibers from these gaskets were thereafter read to the jury during the trial. On July 18, 2002, the jury returned verdicts against Garlock, Crane and AC&S, Inc. in the amount of $2,775,706.75, jointly and severally. AC&S, Inc. thereafter declared bankruptcy, leaving only Garlock and Crane liable for the jury verdict.

On appeal to the Court of Special Appeals, that court, in an unreported opinion, vacated the judgment of the trial court, finding that the trial court had committed an abuse of its discretion when it denied Garlock's motion for leave to withdraw or amend its admissions. As a result of this holding, the intermediate appellate court further held that the judgment against Crane should be vacated as well, stating, in regard to the question of "whether the judgment in favor of [petitioners] ought to stand against Crane alone," that "we believe it fairer to Crane to send the entire Wilson case back for retrial." Petitioners thereafter filed a Petition for Writ of Certiorari and on October 6, 2004, the Court of Appeals granted the petition.

Held: The Court of Appeals held that the trial court, in denying Garlock leave to withdraw or amend certain admissions deemed to have been conclusively established by default, did not commit an abuse of its discretion. The Court found that the trial court's determination that petitioners would likely suffer prejudice if Garlock were granted leave to withdraw or amend its admissions on what was essentially the eve of trial was not so untenable as to constitute an abuse of discretion. Under Maryland Rule 2-424 (d), a court "may permit withdrawal or amendment if the court finds that it would assist the presentation of the merits of the action and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits." Petitioners had cited specific trial strategies which were scaled back or altogether abandoned due to their lack of necessity after Garlock was held to certain admissions. The Court also acknowledged the substantial backlog of asbestos cases before the courts and the adverse effect a continuance would have on petitioners obtaining resolution to their claim. The Court noted that with the quantity of cases involving asbestos litigants, the

scheduling and maintaining of trial dates is more important, both for the parties to the action and for the courts. Thus, the Court held that the trial court did not commit an abuse of its discretion when it denied Garlock's motion, reversing the decision of the Court of Special Appeals.

Catherine Wilson, et al. v. John Crane, Inc., et al. No. 79, September Term, 2004, filed February 10, 2005. Opinion by Cathell, J.

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CONTROLLED SUBSTANCES — FORFEITURES — PROCEEDINGS — The United States may adopt seizures of property initially seized by non-federal law enforcement agencies and declared by federal statute subject to forfeiture. Such adoptions cloak the initial seizure with federal authority, as if federal, not state, officials had made the seizure.

CONTROLLED SUBSTANCES — FORFEITURES — PROCEEDINGS — While the State has the right to request federal adoption and forfeiture, the State cannot avoid State forfeiture law merely by requesting federal adoption.

CONTROLLED SUBSTANCES — FORFEITURES — PROCEEDINGS — The Attorney General of Maryland has the authority to request federal adoption and to deliver custody of the seized property to the federal government. The State is not required to obtain a judicial order.

Facts: After appellee, State of Maryland, seized $20,000 from appellant, William L. DeSantis, Jr., appellant challenged appellee's delivery of the money to the federal Drug Enforcement Agency (DEA).

A Maryland State Police trooper stopped appellant's car for tailgaiting. After conducting sobriety tests on appellant, the trooper concluded that he had driven while intoxicated and arrested him. During a search of the car, incident to arrest, the trooper discovered marijuana and a suitcase containing $20,000 in cash. Pursuant to Maryland law, the trooper seized the cash as illicit drug proceeds.

The Office of the Attorney General of Maryland informed the DEA that the State did not intend to initiate a forfeiture action and requested that the DEA bring a forfeiture action for the cash. The DEA granted the State's request to "adopt" the forfeiture and instructed the State Police to send a certified check for $20,000. The State Police complied with this instruction without obtaining any court authorization. The DEA then initiated forfeiture proceedings, which DeSantis did not contest. After the forfeiture, as authorized by federal law, the DEA paid the State Police an amount representing 80% of the forfeiture, minus administrative expenses.

DeSantis filed a complaint against the State in the Circuit Court for Baltimore County alleging that the State Police unlawfully had deprived him of $20,000. The Circuit Court granted the State's motion for summary judgment. DeSantis appealed to the Court of Special Appeals. The Court of Appeals granted certiorari on its own initiative to consider whether the State Police may deliver custody of such seized property to the DEA without first obtaining an order from a Maryland court.

Held: Affirmed. The Court held that the Attorney General of Maryland has the authority to request federal adoption and to deliver custody of the seized property to the federal government. The State is not required to obtain a court order. The Court reasoned that the Maryland forfeiture statute permits either a court or an official such as the Attorney General to authorize adoption; the statute mandates that the seized property remain in the seizing agency's custody "subject only to the orders, judgments, and decrees of the court *or the official having jurisdiction thereof.*"

The Court rejected the State's argument that when the State requests adoption, Maryland law does not "come into play." The Court responded that the State cannot avoid Maryland forfeiture law merely by requesting federal adoption.

William L. DeSantis, Jr. v. State of Maryland, No. 141, September Term, 2003, filed January 19, 2005. Opinion by Raker, J.

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CRIMINAL LAW - EVIDENCE - CONFRONTATION CLAUSE - *CRAWFORD v. WASHINGTON* - TENDER YEARS STATUTE HEARSAY EXCEPTION - WHEN A CHILD ABUSE VICTIM'S STATEMENT TO A HEALTH OR SOCIAL WORK PROFESSIONAL IS TESTIMONIAL, THAT STATEMENT MAY ONLY BE ADMITTED THROUGH THE HEALTH OR SOCIAL WORK PROFESSIONAL IF THE DECLARANT IS UNAVAILABLE AND THE DEFENDANT HAD A PRIOR OPPORTUNITY TO CROSS-EXAMINE THE DECLARANT

Facts: In late January 2002, 10 year old Tiffany P., 10 year old Megan H., and 8 year old Raven H. approached Tiffany's mother, Vicki P., and told her that the man the girls knew as "Uncle Mike," Michael Conway Snowden, had touched them in an inappropriate manner. After Snowden denied the allegations, Vicki P. called the Montgomery County Police Department, which began a joint investigation with the Child Protective Services for Montgomery County. At the request of the police, the three children were interviewed by Amira Abdul-Wakeel, a sexual abuse investigator for the Montgomery County Department of Health and Human Services. Wakeel was given a copy of the police report generated by Vicki P.'s complaint prior to the interviews. A few days later, Snowden was arrested on a warrant issued based on information obtained during Wakeel's interviews with the children. Prior to Snowden's trial on child abuse and other sexual offenses, the State filed a motion to invoke Md. Code (2001), § 11-304 of the Criminal Procedure Article, otherwise known as Maryland's "tender years" statute. The statutory scheme of § 11-304, if properly invoked and applicable, allows the prosecution to substitute a health or social work professional's testimony for that of the children if, among other things, the trial court interviews the children in a closed hearing and makes a finding on the record that the victims' statements possessed "specific guarantees of trustworthiness." Snowden objected to the admittance of Wakeel's testimony, arguing that its allowance violated his Sixth Amendment right to confrontation guaranteed by the federal Constitution and the Maryland Declaration of Rights. The trial judge overruled Snowden's objection. The children, who the State represented were present in the courthouse, were allowed to depart by the court and did not testify.

Based largely on Wakeel's testimony, Snowden was found guilty by the trial judge on all counts. Snowden timely appealed to the Court of Special Appeals. Oral argument in the intermediate appellate court was held on 5 February 2004. Approximately one month later, on 8 March 2004, the U. S. Supreme Court decided *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004), which held generally that testimonial statements may not be admitted in evidence through non-declarant witnesses unless the declarant is unavailable and there is a prior opportunity for cross-examination. On 5 April 2004, the intermediate appellate court filed its opinion in Snowden's appeal holding that, in light of *Crawford*, Wakeel's testimony violated Snowden's right to confrontation because the children were available to testify and

their statements during the interviews with Wakeel were sufficiently testimonial in nature. *Snowden v. State*, 156 Md. App. 139, 157, 846 A.2d 36, 47 (2004). The State sought review in the Court of Appeals by writ of certiorari, which was granted, 381 Md. 677, 851 A.2d 596 (2004).

Held: Affirmed. When an out of court statement is testimonial in nature, the Confrontation Clause conditions its admission on the unavailability of the witness and a prior opportunity to cross-examine the witness. *Crawford*, 541 U.S. at __, 124 S. Ct. at 1365-67, 158 L. Ed. 2d 177. Although the *Crawford* Court declined to frame a "comprehensive" definition of "testimony," the Supreme Court outlined several characteristics of a testimonial statement. The *Crawford* Court found that a statement is testimonial if, among other things, it is made during a formal police interrogation or under circumstances that would lead an objective witness to reasonably believe that his or her statement would be used at a later trial. *Id*. at __, 124 S. Ct. at 1364-65, 158 L. Ed. 2d 177.

In this case, the social worker's interviews with the children were the functional equivalent of the formal police questioning discussed in *Crawford* as a prime example of what may be considered testimonial. *Id.* The social worker, at the time of the interviews, was participating in a joint investigation of Snowden, whose alleged abuse of the victims was the subject of a police report supplied to the social worker. The social worker was trained in forensic interviewing, and worked closely with the Montgomery County law enforcement and judicial systems on several other occasions. Although Wakeel was not a police officer, because she performed her duties at the behest of law enforcement, she became, for Confrontation Clause analysis, an agent of the police department. Furthermore, a police officer was present during the interviews, a significant factor in determining that the statements were testimonial in nature.

The Court found that the structure, location, and style of the interviews also supported the notion that the interviews with the children were a formal and structured interrogation in which the responses, if inculpating of the putative defendant, reasonably would be expected to be used at a later trial. The Court rejected the State's argument that the statements were not testimonial because they did not occur at a police station, but rather at a more neutral site, the Juvenile Assessment Center in Rockville. The Court concluded that the Center was not a neutral location because it was a County-owned and operated facility unfamiliar to the children and used for the purpose of investigating and assessing victims of child abuse. The Court also resolved that statements to the sexual abuse investigator were no less testimonial because the investigator used non-intimidating, age-appropriate interview techniques designed to limit retraumatization

of the children. Any therapeutic motive or effect of the interviews was irrelevant, for proper Confrontation Clause analysis purposes, to the overarching investigatory purpose of the interviews, and therefore testimonial nature, of the statements elicited.

The Court refused to hold that, as a matter of law, statements made by young children cannot possess the same testimonial nature as those of other, more clearly competent adults. The fundamental principles of the Confrontation Clause are designed to protect the rights of the accused, and the Court was unwilling to create an exception that would allow the State to utilize statements by a young child made in an environment and under circumstances in which the investigators clearly contemplated use of the statements at a later trial. The Court concluded that in determining whether a child hearsay statement was testimonial in nature, the proper test should be based on an objective person, rather than an objective child of that age. The Court also noted that these children demonstrated through their responses during the interviews that they actually were aware of the potential of their statements to be used at a later trial.

When the declarant is available to testify, a defendant does not waive his Confrontation Clause objections if he or she does not object to the State's failure to call the available declarant to testify. To preserve properly a Confrontation Clause objection, a defendant need only insist that any accusations (including testimonial evidence) presented before the factfinder conform to the fundamental principles of the Confrontation Clause.

State v. Snowden, No. 42, September Term, 2004, filed February 7, 2005. Opinion by Harrell, J.

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CRIMINAL LAW- RESTITUTION - DIRECT RESULT OF CRIME.

Facts: This case involves a victim's aborted attempt to retrieve recovered stolen motorcycles from the Baltimore City impound lot and the trial court's ability to award restitution to the victim from the defendant for the value of those motorcycles

pursuant to § 11-603 (a) of the Md. Code, Criminal Procedure Article.

Three motorcycles were stolen from the victim's garage in Baltimore County. Two days later, the motorcycles were recovered undamaged in the yard of John Louise Williams, the defendant, in Baltimore City. When the victim arrived at the Baltimore City impound lot, the City officials refused to let him recover the motorcycles because he could not produce title to the vehicles.

Regarding the theft of the motorcycles, Williams pled guilty to one count of theft over $500. At the plea proceeding, the prosecutor and the attorney representing Williams stipulated to a recited statement of facts supporting the guilty plea, including that the value of the motorcycles was $1,500.00. Williams reserved the right to argue as to restitution for the motorcycles and asserted that the victim's inability to recover the motorcycle was not the direct result of their theft. The prosecutor disagreed, arguing that the victim's motorcycles would not be in the impound lot but for their theft by Williams. The trial judge ordered restitution of $1,500.00.

Williams appealed to the Court of Special Appeals challenging the legality of the restitution component of his sentence. Before the Court of Special Appeals decided the appeal, the Court of Appeals, on its initiative, issued a writ of certiorari to consider solely the question of whether the restitution order was legal. *Williams v. State*, 383 Md. 211, 857 A.2d 1129 (2004).

Held: Restitution order vacated. Restitution under the relevant portion of § 11-603 (a) of the Criminal Procedure Article is available only for losses that occur "as a direct result of the crime." A mere nexus causal relationship, or even tort-like proximate cause, between the crime and the alleged loss is insufficient to order restitution under this statute. There is no evidence in the statement of facts that the motorcycles were damaged or their value depreciated by the theft. The victim's inability to demonstrate title to the motorcycles, or other incidence of ownership, to gain their release from the Baltimore City impound lot, was the sole reason he could not recover them. If the victim ultimately is able to prove ownership of the vehicles, he will receive them back without monetary loss. On the factual record of this case, any loss (if there was one within the meaning of § 11-603 (a)) was not the direct result of the theft of the motorcycles, in accordance with *Pete v. State*, 384 Md. 47, 862 A.2d 419 (2004).

John Louise Williams v. State of Maryland, No. 73, September Term 2004, filed February 4, 2005. Opinion by Harrell, J.

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LAW ENFORCEMENT OFFICERS BILL OF RIGHTS (LEOBR) - DEBARMENT - A DEBARMENT PROCEEDING IS NOT SUBJECT TO THE REQUIREMENTS OF THE LEOBR

Facts: In 2000, the Maryland-National Capital Park and Planning Commission (Commission) began an investigation of two of its park police officers for improper secondary employment activities. Because the employees - petitioners - were police officers, the investigation was initiated in conformance with the Law Enforcement Officers Bill of Rights, (LEOBR), Maryland Code, §§ 3-101 through 3-113 of the Public Safety Article.

Petitioners voluntarily resigned during the investigation, yet the investigation persisted and although the LEOBR proceeding against petitioners was terminated due to their resignations, the information revealed led General Counsel to institute proceedings to debar the petitioners from bidding on its procurement contracts, based on their alleged misconduct as police officers. Petitioners responded to the debarment proceedings by filing suit in the Circuit Court for Prince George's County. Reasoning that the debarment was being sought to "punish" the officers for their conduct as officers, the Circuit Court held that it was a "punitive" action within the meaning of the LEOBR and enjoined the Commission from sustaining the proceedings, unless they were to do so in accordance with the LEOBR.

Applying the method of statutory construction doctrine known as *ejusdem generis*, the Court of Special Appeals reversed. The court held that LEOBR was triggered only by the prospect of sanctions affecting employment, and the use of the general word "punitive," as describing other types of triggering actions, is limited to employment sanctions.

Held: Vacated and remanded. The Court of Appeals affirmed the reasoning of the intermediate appellate court, but vacated its judgment because it had only reversed the circuit court's determination that the petitioners were entitled to injunctive relief. The Court ordered that a declaratory judgment be entered that an action to debar does not trigger the LEOBR.

Regarding the merits of petitioners' claims, the Court held

that because no one in the park police division has the power to debar a person from bidding on procurement contracts, it is senseless to force the Commission to comply with the LEOBR which was meant to protect officers "in departmental disciplinary matters," *Moats* v. *City of Hagerstown*, 324 Md. 519, 526, 597 A.2d 972, 975 (1991). Debarment proceedings are not such matters.

The Court further found that the intermediate appellate court's use *ejusdem generis*, was proper, and lead to a similar conclusion. The LEOBR is meant to protect against "punitive" actions that affect a law enforcement officer's employment status. This is so because the general word "punitive" follows a list of specific actions all relating to one's employment. Therefore, the Circuit Court erred in giving it a broader meaning.

Boyle v. Maryland-National Capital Park & Planning Commission, No. 53, September Term, 2004, filed February 9, 2005. Opinion by Wilner, J.

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TAXATION - TAX EXEMPTION FOR EDUCATIONAL PURPOSE

Facts: Baltimore Science Fiction Society, Inc. (BSFS), owns a two-story building at 3310-12 East Baltimore Street. It purchased the property in 1991, and, for ten years, paid property taxes on it. In August, 2001, BSFS applied to the State Department of Assessments and Taxation (SDAT) for an exemption pursuant to Maryland Code, § 7-202(b) of the Tax-Property Article. When SDAT denied the exemption and the Property Tax Assessment Appeals Board for Baltimore City affirmed, BSFS appealed to the Maryland Tax Court, which reversed. The Circuit Court for Baltimore City reversed the Tax Court.

The parties agreed that BSFS qualifies as a literary organization. The Tax Court found as fact that BSFS is a not-for-profit corporation organized "to promote the cultural, literary, and educational advancement of science fiction and fantasy in the community at large and to promote public goodwill toward the science fiction community." BSFS participates in a regional Baltimore Science Fiction Fantasy Conference, organizes writing

contests, provides writing workshops and seminars, raises funds and maintains a lending library. The property is used for all of the BSFS activities. About 20-25% of the building space is used for the storage of supplies and other items necessary for BSFS activities. The lending library takes up another 20-25% of the space. More than 30% is used for group functions, such as workshops and meetings. The building is open only on Saturday, Sunday and Wednesday evenings, but during those times the public can visit the library or participate in other BSFS activities. BSFS is run entirely by volunteers. Members pay annual dues. Non-members are allowed to use the library and attend all BSFS activities, but they do not usually visit the library or attend meetings.

Held: Reversed. The Court of Appeals held that the Tax Court applied the right standard and that its factual findings were supported by substantial evidence. The Court noted that § 7-202(b) contains two requirements for an exemption – a use and an ownership requirement. The property must be necessary for and actually used primarily for a "charitable or educational purpose to promote the general welfare of the people of the State, and it must be owned by an enumerated kind of entity, the relevant entity in this case being a "nonprofit charitable, fraternal, educational, or literary organization." The Court concluded that the verb "educate" is defined as "to give knowledge or training to; train or develop the knowledge, skill, mind, or character of, especially by formal schooling or study; teach; instruct." Formal instruction may be the heart of education, but it is not the entire body, and there is, necessarily, a certain affinity between "educational" and literary functions and activities. A library serves an educational purpose; writing workshops and readings and presentations by authors constitute an educational purpose; encouraging high school students to compose literature is educational.

Baltimore Science Fiction Society, Inc. v. State Department of Assessments and Taxation, No. 49, September Term, 2004, filed December 15, 2004. Opinion by Wilner, J.

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TORTS -CONSPIRACY TO DEFRAUD - CIRCUMSTANTIAL EVIDENCE - FRAUD -

RELIANCE - FRAUD - DAMAGES - NON-ECONOMIC - PHYSICAL INJURY RULE

CONSUMER PROTECTION ACT - DECEPTIVE TRADE PRACTICE - SALE OF CONSUMER REALTY - ATTORNEYS' FEES

CIVIL PROCEDURE - OBJECTIONS - WAIVER

DAMAGES - PUNITIVE DAMAGES - ACTUAL KNOWLEDGE
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Facts: Nine plaintiffs filed suit in the Circuit Court for Baltimore City, alleging that sellers Robert Beeman (Beeman), Suzanne Beeman, and their corporation, A Home of Your Own, Inc. (AHOYO), along with the lender Irwin Mortgage Corporation (Irwin), its loan officer Joyce Wood, and appraiser Arthur Hoffman had conspired to defraud them, and did defraud them, into buying dilapidated residential properties at inflated prices through an elaborate "flipping" scheme. The jury found the defendants liable for conspiracy to defraud, fraud, and violations of the Consumer Protection Act and awarded each plaintiff differing amounts of economic damages and non-economic (emotional) damages against all defendants, as well as punitive damages against the Beemans and AHOYO. The trial court had previously granted partial judgment in favor of Irwin, Wood and Hoffman as to punitive damages. Post-trial, the trial court awarded attorneys' fees under the CPA against all defendants, subject to a credit for fees collected under the contingent fee agreement. All parties but Beeman and AHOYO appealed to the Court of Special Appeals, Suzanne Beeman eventually withdrawing her appeal. The Court of Special Appeals affirmed the award of compensatory damages, but reversed the partial judgment in favor of Irwin, Wood and Hoffman as to punitive damages and remanded for further proceedings, finding that there was sufficient evidence that they had actual knowledge of the fraud and the falsity of their representations. The Court also vacated the award of attorneys's fees on the premise that the attorneys' fee award would have to take into account the possible additional punitive damages, and noted that there was no need to condition the recovery of attorneys' fees on the contingent fee agreement.

The Court of Appeals granted petitions for *certiorari* filed by Irwin, Wood and Hoffman to consider: 1) whether there was sufficient evidence to support the jury's verdict as to Hoffman's liability, 2) whether the Court of Special Appeals erred in holding that non-economic damages may be awarded absent any proof of physical injury, 3) whether the trial court erred in instructing the jury that fraud damages need only be proven by a preponderance of the evidence and if the Court of Special Appeals erred in holding that any objection to that instruction was waived, 4) whether the Court of Special Appeals erred in reversing partial judgment in favor of Irwin, Wood and Hoffman as to punitive damages and remanding for a partial new trial, and 5) whether the Court of

Special Appeals erred in vacating the attorneys' fees award.

Held: Affirmed in part, reversed in part, and remanded for further proceedings consistent with the opinion.

1) Hoffman's liability for conspiracy to defraud, fraud, and violations of the CPA affirmed: Circumstantial evidence, when "pieced together and considered as a whole," was sufficient to support a finding, even under a clear and convincing standard, that Hoffman conspired with Wood and Beeman to defraud the plaintiffs. Furthermore, since the buyers had the right to cancel the contract of sale if the appraised value of the property was not equal to or greater than the contract price, as explained in the FHA Amendatory Clause contained in each contract of sale, and since buyers testified that they would have done so if Hoffman's appraisals did not support the contract price, the buyers necessarily, even if implicitly, relied on Hoffman's appraisals, supporting the jury verdict for fraud. Finally, Hoffman is liable for committing a deceptive trade practice in the sale of consumer realty since his appraisals infected the property sales and were an integral part of the deceptive trade scheme.

2) There is no intentional tort exception to the physical injury requirement for the recovery of non-economic damages: Although most of the cases in which the physical injury rule has been applied have been negligence cases, the Court of Appeals has never limited the rule to negligence actions or carved out an exception for intentional torts. Conditioning the recovery of damages for the negligent infliction of emotional distress on proof of some kind of physical injury provides assurance that the injury is not feigned, can be measured, and is a provable consequence of wrongful conduct. The Court of Special Appeals' judgment is reversed as to all plaintiffs and remanded as to the one plaintiff who presented sufficient evidence of a physical manifestation of emotional injury.

3) Irwin and Wood did not waive their objection to trial court's instruction as to the burden of proof for damages for conspiracy to defraud and fraud, and the trial court did not err in instructing jury that the damages need only be proved by a preponderance of the evidence: Irwin and Wood preserved their objection to the trial court's instruction under Md. Rule 2-520(e) as to the burden of proof required to prove damages for conspiracy to defraud and fraud by objecting to the general instruction, even though they failed to reference the corresponding question on the verdict sheet. Furthermore, although the existence of damages must be proven by clear and convincing evidence in fraud cases, the measure of damages is proved by the preponderance of the evidence.

4) There was sufficient evidence of actual knowledge to support an award of punitive damages and issue is a severable one that may be

remanded for limited retrial: In fraud cases, punitive damages may only be recovered upon a showing that the defendant made a false representation with actual knowledge of its falsity, and actual knowledge includes "willful blindness." Although the trial court determined that there was insufficient evidence of actual knowledge to send the issue of punitive damages to the jury as to Irwin, Wood and Hoffman, its instructions only permitted the jury to determine defendants' liability for fraud based on actual knowledge, not the lesser mental state of reckless indifference, and defendants did not challenge the instruction on the basis that there was insufficient evidence of actual knowledge, nor did they make such arguments to the Court of Appeals. Irwin, Wood and Hoffman therefore have no enduring claim, since the jury's finding of fraud was based on the same evidence of actual knowledge that would support a claim for punitive damages. The issue of punitive damages is a severable issue under Md. Rule 8-604(b) and may thus be remanded for a limited retrial.

5) Attorneys' fee awards under the CPA are limited to the CPA action and may not be based on other recoveries or causes of action: Since punitive damages cannot be recovered under § 13-408 of the Commercial Law Article, the Court of Special Appeals erred in vacating the attorneys' fees award for reconsideration based on the prospect of additional attorneys' fees.

Arthur J. Hoffman, et. al. v. Toyome Stamper, et. al., No. 33, Sept. Term 2004, filed Feb. 4, 2005. Opinion by Wilner, J.

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TRIAL - COURSE AND CONDUCT OF TRIAL IN GENERAL - REGULATION IN GENERAL - THE FAILURE OF A DEFENDANT TO JOIN IN A CO-DEFENDANT'S MOTION FOR MISTRIAL DOES NOT CREATE EVIDENTIARY SIGNIFICANCE *VIA* AN IMPLIED ASSERTION THAT NO UNFAIR PREJUDICE OCCURRED.

CRIMINAL LAW - TRIAL - COURSE AND CONDUCT OF TRIAL IN GENERAL - REGULATION IN GENERAL - IN GENERAL - ULTIMATE DECISIONS AS TO COURTROOM SECURITY REMAIN IN THE DISCRETION OF THE TRIAL JUDGE AND MAY NOT BE COMPLETELY DELEGATED TO LAW ENFORCEMENT OFFICERS.

Facts: On May 5, 2001, Anthony Williams, Jr. was murdered in Baltimore City. Eddie Terrell ("Terrell"), a friend of the victim, provided information that led to the arrests of Derrick Gibson ("Gibson") and Damon Cooley, ("petitioner"), who were both charged with Williams' murder. Over the defendants' objections they were tried together before a jury in the Circuit Court for Baltimore City in a multi-day trial beginning March 4, 2002. Terrell testified as a State witness at the trial. Terrell was excused from the courtroom at the conclusion of his testimony and allegedly left the courtroom in the company of several sheriff's officers. At the beginning of the next day's proceedings, petitioner's counsel moved for a mistrial on the basis that Terrell's alleged accompanied departure might somehow impact the jury. Gibson's counsel did not join in the mistrial motion.

The trial judge denied the motion for mistrial, observing that the decision to place additional security personnel in the courtroom had been the determination of the sheriff and the trial judge did not intend to "second guess" such a decision. The defendants were subsequently found guilty: Gibson was convicted of first-degree murder, among other charges, and petitioner was convicted of second-degree murder, among other charges.

On appeal, the intermediate appellate court affirmed the defendants' convictions as well as the denial of the mistrial motion, in part, based on its determination, that, *inter alia*, the failure of Gibson's counsel to join in the motion for mistrial constituted an "implied assertion" and served as "evidentiary significance" that the defendants were occasioned no unfair prejudice by the jury's possible observation of Terrell leaving the courtroom under the escort of sheriff's officers.

Both defendants filed Petitions for Writ of Certiorari with the Court of Appeals, which granted only Cooley's petition.

Held: The Court of Appeals held that the intermediate appellate court erred in attaching "evidentiary significance" to the actions or inactions of a co-defendant's counsel. Such silence or non-participation of a co-defendant in respect to a mistrial motion is not evidence against the defendant via an implied assertion in respect to a lack of prejudice to a moving defendant. There is no evidentiary significance to what a co-defendant's counsel does or fails to do in respect to a decision on the merits of a trial court's holding on a mistrial motion filed by the other co-defendant.

Final decisions of what constitutes appropriate courtroom security measures are determinations that rest entirely in the discretion of the trial judge and such ultimate decisions normally may not be completely delegated or abrogated to law enforcement

officers.

Damon Cooley v. State of Maryland No. 69, September Term, 2004, filed February 10, 2005. Opinion by Cathell, J.

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COURT OF SPECIAL APPEALS

ADMINISTRATIVE LAW - SUBSTANTIAL EVIDENCE REVIEW - MIXED QUESTIONS OF FACT AND LAW: STANDING ALONE, EVIDENCE THAT AN EMPLOYEE TESTED POSITIVE FOR MARIJUANA USE DID NOT AMOUNT TO SUBSTANTIAL EVIDENCE OF THE EMPLOYEE'S USE OR POSSESSION OF DRUGS AT WORK, UNDER MD. CODE (1997 REPL. VOL., 2003 SUPP.), STATE PERSONNEL & PENSIONS § 11-105(3). ADDITIONALLY, THE CONCLUSION THAT THE PRESENCE OF

DETECTABLE TRACES OF MARIJUANA USAGE IN AN EMPLOYEE'S BODY, WHILE AT HIS/HER PLACE OF EMPLOYMENT, ITSELF AMOUNTS TO USE OR POSSESSION OF DRUGS AT WORK IS NOT A REASONABLE APPLICATION OF THAT STATUTE TO THE FACTS OF THIS CASE.

Facts: A State employee tested positive for having used marijuana. On the basis of that fact alone, employee was fired, purportedly under authority of Md. Code (1997 Repl. Vol., 2003 Supp.), State Personnel & Pensions § 11-105(3)which provides, *inter alia,* "The following actions are causes for automatic termination of employment: ... (3) illegal sale, use, or possession of drugs on the job;... ." The statute permits immediate termination when State employees sell, use, or possess drugs while at work. (Drug use off-the-job does not permit immediate termination.) Employee pursued intra-agency appeal to the Office of Administrative Hearings; ALJ affirmed termination. Employee sought judicial review, and Circuit Court for Baltimore City affirmed.

Held: Reversed and remanded. (1) As a purely factual issue, one cannot reasonably infer that employee used or possessed drugs *while at work* based solely on employee's positive drug test; the ALJ's "inference" was a *non sequitur*. (2) As a mixed question of fact and law, ALJ's conclusion that a positive drug test *constitutes* possessing or using drugs at work was an unreasonable application of the law to the facts of this case; ALJ's conclusion would eliminate the distinction between off-the-job drug use and on-the-job drug use.

Gertrude Bond v. Dept. of Public Safety and Correctional Services, No. 2400, September Term 2003, decided January 31, 2005. Opinion by Davis, J.

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EVIDENCE - BUSINESS RECORD EXCEPTION TO HEARSAY RULE - CRAWFORD v. WASHINGTON, 541 U.S. 36, 124 S. CT. 1354 (2004); UNITED STATES CONSTITUTION, AMENDMENT VI; SNOWDEN V. STATE, 156 MD. APP. 139 (2004); MARYLAND RULE 5-803 (b)(6), BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE; NON-TESTIMONIAL HEARSAY STATEMENTS; CRAWFORD, ALTHOUGH OVERRULING OHIO V. ROBERTS, 448 U. S. 56 (1980), WHICH HAD HELD THAT THE INTRODUCTION OF HEARSAY WILL NOT VIOLATE DEFENDANT'S RIGHT TO CONFRONTATION IF THE HEARSAY IS WITHIN A FIRMLY ROOTED EXCEPTION TO THE RULE AGAINST HEARSAY OR BEARS "PARTICULARIZED THE GUARANTEES OF TRUSTWORTHINESS," HELD THAT TESTIMONIAL HEARSAY REQUIRES THAT THE ACCUSED BE CONFRONTED WITH THE PARTY MAKING THE HEARSAY STATEMENT; AS TO NON-TESTIMONIAL HEARSAY, INCLUDING

BUSINESS RECORDS, THE COURT SHOULD NOT INVOKE THE SAME ANALYSIS AS THAT REQUIRED FOR TESTIMONIAL HEARSAY; WHEN CONCLUSIONS OF MEDICAL EXAMINER AS TO MANNER OF DEATH ARE CONTESTED AND ARE CENTRAL TO PROOF OF CORPUS DELECTI, SUCH CONCLUSIONS ARE "TESTIMONIAL" IN CONTEMPLATION CRAWFORD; IN THE CASE, SUB JUDICE, NOTWITHSTANDING THAT AUTOPSY REPORT IS A BUSINESS RECORD, THE FACT THAT DIFFERENT INTERPRETATIONS OF THE AUTOPSY RESULTS INDICATE THAT THE VICTIM DIED OF EITHER NATURAL CAUSES OR OF A HOMICIDAL ACT COMPELS THE CONCLUSION THAT MEDICAL EXAMINER'S CONCLUSIONS IN THE REPORT FUNCTIONED IN THE SAME MANNER AS TESTIMONIAL EVIDENCE, THEREBY REQUIRING THAT, ABSENT TESTIMONY BY THE MEDICAL EXAMINER WHO PERFORMED THE AUTOPSY, THE CONCLUSIONS AND OPINIONS OF THE MEDICAL EXAMINER WHO PERFORMED THE AUTOPSY MUST BE REDACTED BEFORE REPORT MAY BE RECEIVED INTO EVIDENCE; THE LOWER COURT, PROPERLY REDACTED CONCLUSIONS OF MEDICAL EXAMINER WHO PERFORMED AUTOPSY AND ADMITTED ONLY FINDINGS OF DECEDENT'S PHYSICAL CONDITION WHICH WERE OBJECTIVELY ASCERTAINED AND GENERALLY RELIABLE; MEDICAL EXAMINER, WHO DID NOT PERFORM AUTOPSY, MAY RENDER OPINION AS TO MANNER OF DEATH BASED ON OBJECTIVE FINDINGS OF PHYSICAL CONDITION OF DECEDENT OF EXAMINER WHO PERFORMED EXAMINATION.

Facts: On April 11, 2003, appellant was found guilty of first degree felony murder, second degree murder, robbery, and burglary. On October 19, 2001, after the family of the victim, Irene Ebberts, found her in her home, no longer breathing, she was declared deceased at the scene. An investigation ensued that led to the apprehension of appellant. The autopsy report prepared by Dr. Joseph Pestaner, who did not testify, contained numerous objectively ascertained facts and concluded that the cause of death was smothering and the manner of death was homicide. Appellant argued in a pretrial motion that Dr. Mary Ripple should not be allowed to testify regarding the findings in the autopsy report, as her opinion was based on the report and police investigative information. Appellant additionally argued that the autopsy report should not be admitted into evidence because Dr. Pestaner would not testify, and, accordingly, appellant's Sixth Amendment right to confrontation would be violated. The circuit court concluded that opinions, *i.e.*, homicide, smothering, and disease, would be redacted in the report, and the objectively ascertained findings, would remain. The autopsy report was ultimately admitted into evidence, in its redacted form, as a business record.

During trial, much of the State's case was based on Dr. Ripple's testimony. She testified that she reviewed the case file and, basing her conclusion on Dr. Pestaner's report and other information within the file, determined that the victim died from "asphyxia during the robbery" from smothering. Three expert witnesses disputed her conclusions, believing the victim died of natural causes.

Held: Although the conclusions and opinion of the performing

doctor were "testimonial," since they were redacted, the report, including only objectively ascertained facts, was properly admissible. Additionally, Dr. Ripple, who did not perform the autopsy, may render an opinion as to the victim's manner of death based on the autopsy report and case file.

In *Crawford v. State*, the Supreme Court overruled *Roberts* in regards to testimonial hearsay, but retained the prior standards enunciated in *Roberts* for non-testimonial hearsay. The *Crawford* Court concluded that when non-testimonial hearsay is at issue, the individual states shall determine what statements should be excluded, whereas when testimonial evidence is at issue, the statements will only be admitted if the declarant is unavailable and there was a prior opportunity for cross examination.

In this case, the autopsy report falls within the business records exception and is technically non-testimonial. In accord with prior Maryland precedent, an autopsy report may be admitted into evidence, even if the performing examiner does not testify, so long as the report contains only objectively ascertained facts, as was the case here. Non-testimonial hearsay may be admitted so long as it is within a "firmly rooted" hearsay exception. If, however, conclusions or opinions within an autopsy are central to the determination of the defendant's guilt and are offered into evidence, they serve as a functional equivalent to testimony and, therefore, trigger the testimonial analysis enunciated by *Crawford*.

Wesley A. Rollins v. State of Maryland, No. 1333, September Term, 2003, decided January 28, 2005. Opinion by Davis, J.

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WORKERS' COMPENSATION - SUMMARY JUDGMENT

Although the summary judgment rule applies to judicial review of rulings by the Workers' Compensation Commission, if the claimant was the prevailing party before the Commission, and the employer has requested a jury trial *de novo*, the presumption of correctness of the Commission's ruling precludes the circuit court from ruling as a matter of law that the claimant's evidence of a *prima facie* case will be insufficient.

Facts: William A. Kelly, III, a Baltimore County police officer, filed a claim with the Commission after being involved in an accident while operating his police cruiser, which was hit by a drunk driver. Kelly claimed he underwent surgery on his lower back as a direct consequence of that accident, which he claimed aggravated a prior back injury. The County opposed Kelly's claim for benefits, alleging that Kelly's surgery stemmed solely from the

pre-existing back injury, and not from the employment-related accident. The Commission ruled in Kelly's favor, and issued him compensation benefits.

The County challenged the decision of the Commission by filing a petition for *de novo* judicial review in the Circuit Court for Baltimore County. In the circuit court, the County filed a motion for summary judgment. In its motion, the County claimed the Commission's decision was incorrect as a matter of law because Kelly failed to submit any medical expert testimony specifically attributing the cause of his back injury to the employment-related accident. The County argued that Kelly was required to produce expert testimony as to causation because the issue involves a pre-existing injury, and therefore, is a complex medical question. The circuit court granted the County's motion and entered summary judgment in its favor. Kelly filed an appeal to the Court of Special Appeals from the judgment of the Circuit Court for Baltimore County.

Held: Reversed and remanded. In an essential *de novo* review, when the employer pursues judicial review of an unfavorable decision by the Commission, the claimant has the benefit of the presumption of correctness of the Commission's ruling. The employer must meet the burden of establishing a *prima facie* case and must bear the burden of persuading the fact finder by a preponderance of the evidence that the Commission's decision was incorrect. Additionally, "[T]he decision of the Commission is, *ipso facto*, the claimant's *prima facie* case and the claimant runs no risk of suffering a directed verdict from the insufficiency of his evidence before the circuit court." *S.B. Thomas*, 114 Md. App. 357, 367 (1997); *General Motors v. Bark*, 79 Md. App. 68, 80 (1989).

In this case, Kelly, the claimant, received a decision in his favor from the Commission, awarding him benefits for the back injury that he claimed he sustained from his employment-related motor vehicle accident. Accordingly, at the circuit court level, the County was required to produce a *prima facie* case establishing that there was no causal connection between the employment-related accident and the need for Kelly to undergo back surgery.

The County, however, filed a motion for summary judgment arguing that because Kelly did not introduce an expert medical opinion as to causation during the Commission hearing, "the Claimant failed to meet his burden of proof as a matter of law." Although the normal rules governing summary judgment apply in appeals from the Workers' Compensation Commission, if the claimant was the prevailing party before the Commission, and the employer has requested a jury trial *de novo*, the presumption of correctness of the Commission's ruling precludes the circuit court from ruling as a matter of law, upon a motion for summary judgment, that the claimant's evidence of a *prima facie* case will be insufficient.

As the successful claimant before the Commission, and as the non-moving party on appeal, Kelly had no burden of production as to factual issues in the circuit court proceedings. The presumption of correctness of the Commission's decision was Kelly's *prima facie* case, and amounted to legally sufficient evidence to generate a genuine dispute as to a material fact. The main issue in the case -- whether Kelly's employment-related back injury was causally connected to his back surgery -- was in dispute between the parties, and the evidence presented to the Commission permitted more than one inference to be drawn therefrom. The circuit court erred in resolving these disparate inferences as a matter of law on summary judgment.

William A. Kelly, III v. Baltimore County, Maryland, No. 2595, September Term, 2003, filed January 31, 2005. Opinion by Meredith, J.

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ATTORNEY DISCIPLINE

By an Order of the Court of Appeals of Maryland dated February 2, 2005, the following attorney has been disbarred by consent from the further practice of law in this State:

RICHARD H. KELLER
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By an Opinion and Order of the Court of Appeals of Maryland dated February 4, 2005, the following attorney has been disbarred from the further practice of law in this State:

JARED K. ELLISON

*

JUDICIAL APPOINTMENTS

On January 4, 2005, the Governor announced the appointment of **W. LOUIS HENNESSY** to the District Court for Charles County. Judge Hennessy was sworn in on February 1, 2005 and fills the vacancy created by the retirement of the Hon. Gary S. Gasparovic.

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On January 4, 2004, the Governor announced the appointment of **JAMES L. MANN** to the District Court for Baltimore City. Judge Mann was sworn in on February 2, 2005 and fills the vacancy created by the appointment of the Hon. Ben C. Clyburn to the position of Chief Judge of the District Court of Maryland.

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